

WAC 458-20-100 Appeals, small claims and settlements. (1) Introduction. This section explains the procedure for a taxpayer to seek an administrative review of an action by the department of revenue. A taxpayer is encouraged to request a conference with a supervisor of the department where disagreement exists over a proposed action of the department. The request for the conference should be made to the division of the department that is proposing to issue an assessment or is taking some other action in dispute. Such conferences provide an opportunity to resolve any issue without a review as provided in this section. Any taxpayer who has been issued a notice of departmental action or having paid any tax administered by chapter 82.32 RCW may petition the department of revenue for the review of the action or for a determination of the taxpayer's liability for the tax paid. Departmental actions subject to review include but are not limited to:

- (a) A notice of assessment of additional taxes, of use tax due, or of tax balances due;
- (b) A notice of penalties or interest due;
- (c) A notice of delinquent taxes, including a notice of tax collection activities; and
- (d) An order revoking a certificate of registration.

(2) Time for filing of petitions - extensions. A review of a departmental action is started by the filing of a petition for review. A petition for review must be filed with the department within thirty days after the date the departmental action has occurred.

(a) A petition for review requesting a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. Therefore, the department may not grant an extension of time to file a petition for review requesting a refund of taxes paid.

(b) An extension of time to file a petition may be granted if requested within the thirty-day filing period.

(c) A petition or request for extension is timely if it bears a United States Postal Service cancelled postmark on or before the thirty-day due date or is received by the department within the thirty-day filing period.

(3) Contents of petitions. A petition should be addressed: State of Washington, Department of Revenue, Interpretations and Appeals, Mailstop AX-02, Olympia, Washington 98504-0090. A petition must be in writing and contain the following information:

- (a) Indicate which item or items are in question;
- (b) Set forth the reasons why the correction, refund, or relief should be granted;
- (c) State the amount of the tax, and/or interest, and/or penalty which the taxpayer believes to be in error or which the taxpayer seeks to be refunded;
- (d) Indicate whether the petitioner elects to have the petition heard under the small claims procedure;

(e) Indicate whether the petitioner requests the petition to be heard as an executive level petition stating the specific reasons for the request;

(f) In the case of an appeal of an order revoking a certificate of registration, specifically identify the mistake of fact, error of law, or the date the warrant was paid; and

(g) Be signed by the taxpayer and/or authorized representative.

(h) The department has provided as an addendum to this section a form which when completed will provide the necessary information. A taxpayer wishing a review is encouraged to provide the information requested so that the appeal can be processed, heard, and decided as quickly as possible.

(4) Hearing on the petition - issuance of determination. A petition for review may be granted or denied. If a review is denied, the taxpayer shall be promptly notified by mail. The reason for the denial, e.g., the nontimely filing of the petition, shall be included in the notification.

(a) When a petition for review is granted, the department may grant a hearing or issue a determination without conducting a hearing. If a hearing is granted, the taxpayer is notified by mail of its time and place. Most hearings are conducted by telephone conference. If a taxpayer prefers and requests an in-person hearing at the department's Olympia office, the request will be granted. Hearings at offices of the department of revenue throughout the state may be granted upon special request of the taxpayer and at the

discretion of the department.

(b) Hearings will be conducted by an administrative law judge of the department of revenue, an employee specially trained in interpretation of the Revenue Act and the precedents established by prior department rulings and by the courts. Other departmental employees may be in attendance at an in-person hearing and the department shall notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other person.

(c) All hearings before an administrative law judge will be conducted informally in a nonadversary, uncontested manner.

(d) Following the hearing, the administrative law judge will make such determination as may appear to be just and lawful and in accordance with the rules, principles, and precedents established by the department. The department shall notify the taxpayer in writing of the decision.

(e) The determination of the administrative law judge is the official position of the department of revenue and is binding upon the taxpayer unless a petition for reconsideration is timely filed. See: Subsection (8) of this section for taxpayer appeals outside the department.

(5) Request for reconsideration. If a taxpayer believes that an error has been made in the determination of the administrative law judge, the taxpayer may, within thirty days of the issuance of the determination, request in writing a reconsideration of the decision. A petition for reconsideration may be made on the petition form provided as an addendum to this section. The request for reconsideration shall indicate specific mistakes in law or fact and provide legal authority that would necessitate the reconsideration of the decision. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue which has industry-wide impact or significance.

The department shall decide whether or not the decision is to be reconsidered and may grant or deny the petition. If the request for reconsideration is denied, the department shall mail to the taxpayer written notice of the denial and the reason for the denial, e.g., the petition is not timely filed, the authorities specified do not support a mistake of law, or the facts specified were considered in the determination. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. If a hearing is granted, it shall be conducted informally in a nonadversary, uncontested manner, and shall be held at the department offices in Olympia. A determination upon reconsideration shall be sent to the taxpayer in writing and shall represent the final action of the department of revenue.

(6) Request for hearing at the executive level. If a taxpayer appeal involves an issue of first impression (one for which no precedent has been established) or an issue which has industry-wide significance or impact, a taxpayer may request the petition be heard at the executive level by the director or the director's designee. The request must specify the reasons why this action is appropriate. The department may grant or deny the request. An executive level hearing shall be conducted informally in a nonadversary, uncontested manner. A determination from an executive level appeal is the final action of the department and a request for reconsideration will not be granted.

(7) Small claims hearing. Under certain conditions, a taxpayer may elect, by so indicating on the petition, to have the appeal heard under the expedited small claims hearing procedure.

(a) An appeal qualifies for a small claims hearing only if:

(i) The tax at issue in the appeal is five thousand dollars or less; or

(ii) Penalties and/or interest is the only issue and the amount of penalties and/or interest is ten thousand dollars or less.

(b) The department may decline to hear an appeal under the small claims procedure if the department finds it to be unsuitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, and constitutional issues are generally not suitable for small claims resolution.

(c) After the small claims hearing with the administrative law judge has been conducted, the taxpayer may no longer revoke the election for small claims resolution.

(d) The taxpayer will be notified of the time and place of the hearing. The hearing will be conducted informally in a nonadversary, uncontested manner by an administrative law

judge and the taxpayer may personally, or through a representative, present oral and/or written testimony at that time. Upon conclusion of the hearing, the administrative law judge may render an oral decision at that time, but in no case will the decision be rendered more than five working days after the hearing. In all small claims hearings, either an abbreviated written decision (determination) containing the department's conclusions will be issued, or a closing agreement will be signed.

(e) The decision rendered in a small claims hearing is the final action of the department and a taxpayer request for reconsideration of the decision will not be granted.

(f) A decision rendered in a small claims hearing has no precedential value.

(8) **Appeals to board of tax appeals - Thurston County Superior Court.** A taxpayer may appeal a determination of the department of revenue to the board of tax appeals or may seek a refund of taxes paid in Thurston County Superior Court. See: Chapter 82.03 RCW, and RCW 82.32.180. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department of revenue for a stay of collection pursuant to RCW 82.32.200. See: WAC 458-20-228.

(9) **Rulings of prior determination of tax liability.** Any taxpayer may make a written request to the department for a written opinion of future tax liability. Such a request shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented until the department changes the opinion by a determination or subsequent opinion issued to the taxpayer, or the legal basis of the opinion has been changed by legislative, court, or WAC rule action. When changes occur, a taxpayer may contact the department to determine if a change in the legal basis of the opinion has occurred. Any future change in the opinion shall have prospective application only.

(10) **Settlement.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change; or

(ii) A conflict exists between precedents i.e., statutes, rules, excise tax bulletins, and correspondences to the taxpayer; or

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve; or

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department; or

(ii) The taxpayer challenges a long-standing departmental policy or a WAC rule which the department will not change unless the policy or rule is declared invalid by a court of record; or

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case; or

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement being signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

PETITION
STATE OF WASHINGTON
DEPARTMENT OF REVENUE
INTERPRETATION AND APPEALS
MAILSTOP AX-02
OLYMPIA, WA 98504-0090

Taxpayer Name
Address and
Telephone No.
.....
.....

Name, address and
Telephone No.
of Representative:
.....

Registration No.:

Amount At Issue:

Audit No.: Document No.:

Do you request this petition to be heard under the small claims procedure? The small claims procedures are limited to appeals of tax issues which do not exceed \$5,000 or issues involving penalties and interest which do not exceed \$10,000. You may not revoke your request to be heard under the small claims procedure after the conference with the administrative law judge has been held. Under the small claims procedures, the decision of the department is final and the department will not accept a petition for reconsideration.

.... Yes No

Do you request this petition to be heard as an executive level petition? A petition for executive level consideration may be granted if the issue is one of first impression or the issue has industry-wide impact or significance. The specific reasons for an executive level appeal must be specified in the petition. A decision of a petition heard at the executive level is the final decision of the department and a petition for reconsideration will not be accepted.

.... Yes No

Is this a petition for reconsideration?

.... Yes No

Is this a petition for executive level reconsideration?
(Specific reasons must be specified.)

.... Yes No

Items Protested (attach additional information if necessary): ..
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Time Period at Issue:

Relief Requested (attach additional information if necessary): ..
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Reason for relief (cite applicable rules, statutes, etc., and
attach additional information if necessary):
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(Signature of Taxpayer or Authorized Representative - Date)

[Statutory Authority: RCW 82.32.300. 90-24-049, ' 458-20-100,
filed 11/30/90, effective 1/1/91; 83-07-032 (Order ET 83-15), '
458-20-100, filed 3/15/83; Order ET 75-1, ' 458-20-100, filed
5/2/75; Order ET 70-3, ' 458-20-100 (Rule 100), filed 5/29/70,
effective 7/1/70.]